

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FEDEX FREIGHT, INC.

Employer

and

Case 32-RC-144041

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 439
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹Member Johnson finds the petitioned-for unit appropriate under the Board's traditional community of interest analysis in similar driver cases. See, e.g., *Home Depot USA, Inc.*, 331 NLRB 1289, 1291 (2000) (3-0 decision of Chairman Truesdale and Members Fox and Brame, finding appropriate separate unit of drivers). The Employer contends that, because the drivers perform a substantial amount of dockwork and hostling work, the appropriate unit must include dockworkers. This argument is not compelling. Although city drivers and road drivers spend approximately 7% and 6% respectively, of their time in non-driving work, this figure is still significantly below the 30-40% figure in *Home Depot*. Id. at 1290. Member Johnson notes that in cases such as *FedEx Freight*, 04-RC-138218 (petition withdrawn prior to the Board ruling on the Employer's Request for Review), where drivers work almost exclusively on the dock, he would find that an appropriate unit of drivers must include the dockworkers. However, that is not the case here. Furthermore, although Member Johnson agrees with the Employer that *Home Depot* "does not establish a numerical guide" in a strict sense concerning non-driver work (see Er. Br. at 26 n.8), and that the Employer may have shown that a combined driver-dockworker unit would also be appropriate or even more appropriate due to the fact that the vast majority of drivers perform a limited degree of dock work, the traditional inquiry Member Johnson applies here is whether a "drivers only" unit is *inappropriate* under the traditional unit appropriateness teachings of *Home Depot* and related cases. In *Home Depot*, just like here, for example, (1) all drivers performed some non-driver work, but (2) drivers had a CDL allowing them to drive, the lack of which precluded non-drivers from driving the trucks on the open road; and (3) the majority of the work that the drivers did was that kind of driving. Id. at 1289-91. Accordingly, while Member Johnson acknowledges the well-argued points of the Employer in this case and recent prior cases, he would apply the traditional test to find that a denial of review is warranted and, thus, he finds no need to express a view whether the Board correctly decided *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. sub

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| MARK GASTON PEARCE, | CHAIRMAN |
| KENT Y. HIROZAWA, | MEMBER |
| HARRY I. JOHNSON, III, | MEMBER |

Dated, Washington, D.C., March 11, 2015

nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), and whether the Regional Director correctly applied it here.